
SENATE BILL No. 362

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-26-5-17.

Synopsis: Interstate enforcement of protective orders. Conforms Indiana law to the Uniform Interstate Enforcement of Protective Orders Act by: (1) providing that an Indiana court may not enforce a foreign protection order issued by the tribunal of a state that does not recognize the standing of a protected individual to seek enforcement of the order; and (2) specifying that if one or more of the criteria for determining whether a protection order is facially valid do not apply to a foreign protection order, the inapplicability of the criteria to the foreign protection order is an affirmative defense in an action seeking enforcement of the order.

Effective: July 1, 2008.

Simpson

January 14, 2008, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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Introduced

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE BILL No. 362

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-26-5-17 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 17. (a) A foreign
3 protection order is facially valid if it:

- 4 (1) identifies the protected person and the respondent;
- 5 (2) is currently in effect;
- 6 (3) was issued by a state or tribal court with jurisdiction over the:
7 (A) parties; and
8 (B) subject matter;
9 under the law of the issuing state or Indian tribe; and
10 (4) was issued after a respondent was given reasonable notice and
11 an opportunity to be heard sufficient to protect the respondent's
12 right to due process. In the case of an ex parte order, notice and
13 opportunity to be heard must be provided within the time required
14 by state or tribal law and within a reasonable time after the order
15 is issued sufficient to protect the respondent's due process rights.

16 (b) A facially valid foreign protection order is prima facie evidence
17 of its validity. **If one (1) or more of the criteria of facial validity set**

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1 **forth in subsection (a)(1) through (a)(4) do not apply to a foreign**
 2 **protection order, the inapplicability of the criteria to the order is**
 3 **an affirmative defense in an action seeking enforcement of the**
 4 **order.** The protection order may be inscribed on a tangible medium or
 5 stored in an electronic or other medium if it is retrievable in
 6 perceivable form. Presentation of a certified copy of an order for
 7 protection is not required for enforcement.

8 (c) Except as provided in subsection (d) **and subsection (h)**, a
 9 protection order that is facially valid and issued by a court of a state
 10 (issuing state) or Indian tribe shall be accorded full faith and credit by
 11 Indiana courts.

12 (d) A mutual foreign protection order is not entitled to full faith and
 13 credit if the order is issued by a state or tribal court against a person
 14 who has petitioned, filed a complaint, or otherwise filed a written
 15 pleading for protection against a family or household member, unless:

- 16 (1) a separate petition or motion was filed by a respondent;
- 17 (2) the issuing court has reviewed each motion separately and
- 18 granted or denied each on its individual merits; and
- 19 (3) separate orders were issued and the issuing court made
- 20 specific findings that each party was entitled to an order.

21 (e) Registration or filing of a foreign protection order is not a
 22 prerequisite to enforcement of the order in Indiana, and a protection
 23 order that is consistent with this section shall be accorded full faith and
 24 credit notwithstanding a failure to register or file the order in Indiana.
 25 However, if a petitioner wishes to register a foreign protection order in
 26 Indiana, all Indiana courts of record shall accommodate the request.
 27 The division of state court administration shall develop a form to be
 28 used by courts, clerks, and law enforcement agencies when a petitioner
 29 makes a request to register a foreign protection order. The courts,
 30 clerks of the courts, and sheriffs or law enforcement agencies
 31 maintaining depositories shall employ the same procedures required
 32 under IC 5-2-9-6 for entering, modifying, extending, or terminating a
 33 foreign protection order as those used for a protection order and a no
 34 contact order originating in Indiana.

35 (f) A facially valid foreign protection order shall be enforced by a
 36 law enforcement officer and a state court as if it were an order
 37 originating in Indiana. The order must be enforced if the foreign
 38 protection order contains relief that the state courts lack the power to
 39 provide in an order for protection issued in Indiana.

40 (g) An Indiana law enforcement officer:

- 41 (1) may not require notification, registration, or filing of a facially
- 42 valid foreign order for protection as a prerequisite to enforcement

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1 of an order;

2 (2) if a foreign protection order is not presented, may consider
3 other information to determine under a totality of the
4 circumstances whether there is probable cause to believe that a
5 valid foreign order for protection exists; and

6 (3) who determines that an otherwise valid foreign protection
7 order cannot be enforced because a respondent has not been
8 notified or served with the order, shall:

9 (A) inform the respondent of the order;

10 (B) serve the order on the respondent;

11 (C) ensure that the order and service of the order are entered
12 into the state depository;

13 (D) allow the respondent a reasonable opportunity to comply
14 with the order before enforcing the order; and

15 (E) ensure the safety of the protected person while giving the
16 respondent the opportunity to comply with the order.

17 **(h) An Indiana court may not enforce a foreign protection order**
18 **issued by the tribunal of a state that does not recognize the**
19 **standing of a protected individual to seek enforcement of the order.**

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